

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-52000; File No. SR-ISE-2005-21)

July 8, 2005

Self-Regulatory Organizations; International Securities Exchange, Inc.; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change and Amendments No. 1 and 2 Thereto to Amend Its Summary Fine Schedule for Position Limit Violations

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ and Rule 19b-4 thereunder,² notice is hereby given that on June 15, 2005, the International Securities Exchange, Inc. ("Exchange" or "ISE") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by ISE. On June 23, 2005, the Exchange filed Amendment No. 1 to the proposed rule change.³ On July 7, 2005, the Exchange filed Amendment No. 2 to the proposed rule change.⁴ The Commission is publishing this notice and order to solicit comments on the proposed rule change, as amended, from interested persons and to approve the proposal on an accelerated basis.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

ISE proposes to amend its summary fine schedule for position limits. The text of the rule

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ In Amendment No. 1, the Exchange amended the proposed rule change such that under proposed ISE Rule 1614(d)(1)(B): (1) fines for member accounts would be based on the number of violations in any 12-month rolling period and not within one calendar year; and (2) the \$5,000 fine proposed by the Exchange would be for the fourth and each subsequent offense and not just for the fourth offense.

⁴ In Amendment No. 2, the Exchange added a footnote to ISE Rules 1614(d)(1)(A) and (B) providing that (i) a one-trade date overage, (ii) a consecutive string of trade date overage violations where the position does not change or where a steady reduction in the overage occurs, or (iii) a consecutive string of trade violations resulting from other mitigating circumstances, may be deemed to constitute one offense, provided that the violations are inadvertent.

change is available on ISE's Web site (<http://www.iseoptions.com>), at ISE's principal office, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, ISE included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. ISE has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange's disciplinary rules authorize the imposition of fines for minor rule violations, which are set forth in ISE Rule 1614. With respect to option position limit violations, current ISE Rule 1614(d)(1) sets forth a graduated fine schedule that increases the dollar amount of the fine as the number of cumulative violations increase. The dollar amount of the fines ranges from \$1.00 to \$5.00 per contract for every contract exceeding the applicable position limit. Pursuant to ISE Rule 1614(a), a violation where the fine amount exceeds \$5,000 is subject to disciplinary procedures under ISE Rules 1601 *et seq.*⁵

Based on its experience with processing position limit violations, the Exchange has found that most position limit violations are technical in nature. Accordingly, the Exchange believes that position limit violations should be processed under a summary fine schedule. For example,

⁵ ISE Rule 1614(a) provides in relevant part: "In lieu of commencing a disciplinary proceeding, the Exchange may, subject to the requirements set forth herein, impose a fine, not to exceed \$5,000, on any Member, or person associated or employed by a Member, with respect to any Rule violation listed in section (d) of this Rule."

the Exchange often encounters situations that involve inadvertent calculation errors or computer systems problems which result in sizable position limit overages and a consecutive string of single trade date violations. Because the ISE member is unaware of the problem that caused the violation, the violation can be sizeable and occur over a string of days. In these situations, once the Exchange has identified the overage and notified the ISE member, the ISE member takes appropriate action to bring the position into compliance and, if the overage was based on a computer systems problem, implements appropriate procedures to prevent a recurrence.

Notwithstanding the unintentional nature of the violations, the Exchange's current rules provide for the imposition of fines for position limit violations in accordance with the fine schedule set forth in ISE Rule 1614(d)(1). For violations occurring in customer and member accounts, ISE Rule ISE Rule 1614(d)(1) deems one violation to equal a single date overage. Therefore, a single position limit overage that continues over a string of consecutive days would significantly increase the probability that the fine would exceed the \$5,000 threshold set forth in ISE Rule 1614 as a result of reaching the next level in the graduated fine schedule. In these situations, the Exchange rules require the Exchange to remove the violation from the summary fine process of ISE Rule 1614(d) and place it under the disciplinary process set forth in ISE Rules 1601 et seq.

The Exchange believes that removal of these types of violations from the summary fine process is incongruous with what it believes is the unintentional nature of the majority of the position limit violations that the Exchange comes across. To realign ISE Rule 1614(d) with the current landscape, the Exchange proposes to establish a fixed dollar fine amount per each offense, with the fine amount equaling \$2,500 for violations occurring in the accounts of non-member customers and \$5,000 for violations occurring in all other accounts. ISE believes that

the cap on the fine amount would permit the Exchange to process the majority of position limit violations under the summary fine process without having to subject the violation to the disciplinary procedures provided in ISE Rules 1601 et seq. In addition to restructuring the fine amounts, the proposal would add a footnote to ISE Rules 1614(d)(1)(A) and (B) that the following may be deemed to constitute one offense, provided that the violations are inadvertent: (i) a one-trade-date overage, (ii) a consecutive string of trade-date overage violations where the position does not change or where a steady reduction in the overage occurs, or (iii) a consecutive string of trade violations where there are other mitigating circumstances. Contemporaneous with the imposition of a fine, the Exchange's regulatory staff would work with the subject ISE member to correct the problem that caused the position limit violation.

Pursuant to ISE Rule 1614, the Exchange has the authority to remove the position limit violation from the summary fine process of ISE Rule 1614(d)(1). Under ISE Rule 1614, "the Exchange is not required to impose a fine pursuant to this Rule with respect to the violation of any Rule included herein, and the Exchange may, whenever it determines that any violation is not minor in nature, proceed under Exchange Rules 1603 or 1604, rather than under this Rule." Therefore, the Exchange may remove the violation from the summary fine process whenever it determines that the violation is not minor in nature.

2. Statutory Basis

The Exchange believes the proposed rule change, as amended, would enable the Exchange to deal more efficiently with the majority of position limit violations and to provide the Exchange with a more equitable method of dealing with inadvertent position limit violations. Therefore, ISE believes the proposed rule change, as amended, is consistent with Section 6(b) of

the Act,⁶ in general, and Section 6(b)(5),⁷ in particular, in that it is designed to promote just and equitable principles of trade and to remove impediments to and perfect the mechanism for a free and open market and a national market system.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange believes that the proposed rule change, as amended, would not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

The Exchange has not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any unsolicited written comments from its members or other interested parties.

III. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, as amended, is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic comments:

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-ISE-2005-21 on the subject line.

⁶ 15 U.S.C. 78f(b).

⁷ 15 U.S.C. 78f(b)(5).

Paper comments:

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, Station Place, 100 F Street, NE, Washington, DC 20549-9303.

All submissions should refer to File Number SR-ISE-2005-21. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of ISE. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-ISE-2005-21 and should be submitted on or before [insert date 21 days from the date of publication in the Federal Register].

IV. Commission's Findings and Order Granting Accelerated Approval of Proposed Rule Change

The Commission finds that the proposed rule change, as amended, is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national

securities exchange.⁸ In particular, the Commission believes that the proposal is consistent with Section 6(b)(5) of the Act,⁹ which requires that the rules of an exchange be designed to promote just and equitable principles of trade, to remove impediments and to perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. The Commission also believes that the proposal is consistent with Sections 6(b)(1) and 6(b)(6) of the Act¹⁰ which require that the rules of an exchange enforce compliance with, and provide appropriate discipline for, violations of Commission and Exchange rules. In addition, because the existing ISE Rule 1614(c) offers procedural rights to a person fined under the ISE Rule 1614, the Commission believes ISE Rule 1614, as amended by this proposal, provides a fair procedure for the disciplining of members and persons associated with members, consistent with Sections 6(b)(7) and 6(d)(1) of the Act.¹¹

Finally, the Commission finds that the proposal, as amended, is consistent with the public interest, the protection of investors, or otherwise in furtherance of the purposes of the Act, as required by Rule 19d-1(c)(2) under the Act¹² which governs minor rule violation plans. The Commission believes that the change to ISE Rule 1614 would strengthen its ability to carry out its oversight and enforcement responsibilities as a self-regulatory organization in cases where full disciplinary proceedings are unsuitable in view of the minor nature of the particular

⁸ In approving this proposed rule change, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

⁹ 15 U.S.C. 78f(b)(5).

¹⁰ 15 U.S.C. 78f(b)(1) and 78f(b)(6).

¹¹ 15 U.S.C. 78f(b)(7) and 78f(d)(1).

¹² 17 CFR 240.19d-1(c)(2).

violation. The Commission also notes that ISE's proposal is similar to a proposal by the Chicago Board Options Exchange ("CBOE") that was previously approved by the Commission.¹³

In approving this proposed rule change, the Commission in no way minimizes the importance of compliance with Exchange rules and all other rules subject to the imposition of fines under ISE Rule 1614. The Commission believes that the violation of any self-regulatory organization's rules, as well as Commission rules, is a serious matter. However, ISE Rule 1614 provides a reasonable means of addressing rule violations that do not rise to the level of requiring formal disciplinary proceedings, while providing greater flexibility in handling certain violations. The Commission expects that ISE will continue to conduct surveillance with due diligence and make a determination based on its findings, on a case-by-case basis, whether a fine of more or less than the recommended amount is appropriate under ISE Rule 1614 or whether a violation requires formal disciplinary action.

The Commission finds good cause, pursuant to Section 19(b)(2) of the Act,¹⁴ for approving the proposed rule change, as amended, prior to the thirtieth day after the date of publication of the notice of the filing thereof in the Federal Register. Because the Commission recently approved a substantively similar proposal by CBOE after a full notice-and-comment period and this proposal does not raise any new regulatory issues, the Commission believes that accelerated approval is appropriate.

V. Conclusion

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act¹⁵ and Rule

¹³ See Securities Exchange Act Release No. 47959 (May 30, 2003), 68 FR 34441 (June 9, 2003) (SR-CBOE-2002-05).

¹⁴ 15 U.S.C. 78s(b)(2).

¹⁵ 15 U.S.C. 78s(b)(2).

19d-1(c)(2) thereunder,¹⁶ that the proposed rule change, as amended, (SR-ISE-2005-21) be, and hereby is, approved and declared effective.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹⁷

J. Lynn Taylor
Assistant Secretary

¹⁶ 17 CFR 240.19d-1(c)(2).

¹⁷ 17 CFR 200.30-3(a)(12).